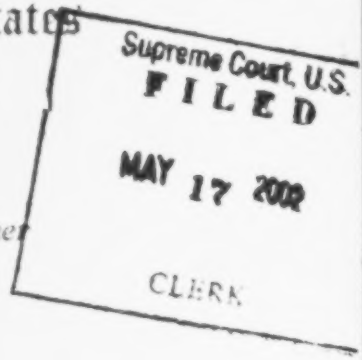
Case No. 01-1593

In The

Supreme Court of the United States



Gordon Ray Potts, Jr.,
Petitioner

v.

Pearl Lynell Potts, et al.
and
Connecticut General Life Insurance, et al
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS EASTERN TENNESSEE

RESPONDENT'S SUPPORT OF PETITION

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ARGUMENT

I, Mary E. Potts Mayforth, pro se, have read the Petition submitted in this case and do hereby submit a response of support in its entirety for the Petition for Writ of Certiorari submitted by Gordon R. Potts, Jr. for the following reasons:

1. JOINTLY ACCUSED PARTY'S PROPERTY DISPOSED OF WITHOUT DUE PROCESS

The Plaintiff's Complaint (Petitioner's App. 103) jointly accused me of the same crime of "theft by coercion" that Gordon R. Potts Jr. was convicted of by the state Court. At the time that the petitioner was convicted, I was still jointly accused, but the Chancellor refused to allow me to testify as a witness or on my own behalf. This violates my constitutional right to a fair hearing and to give a defense. I believe that Tenn. R. Civ. P. 37 was used in this case to violate the Defendants' Constitutional rights to due process and a fair trial. The default judgment awarded to the Plaintiff as punishment for the crime that Defendant Potts was convicted of was money that was my joint property, as per the deceased's wishes and was reimbursement for my college funds that had been held by the deceased since 1974. My property was disposed of without due process.

2. NONSUIT BY PLAINTIFF NOT CONSIDERED BY LOWER COURTS

In the Appeal jointly submitted to the Eastern Tennessee Appellate Court by Gordon R. Potts, Jr. and myself, one of the issues on appeal was the non-suit of both parties for the bulk of the Plaintiff's Complaint. The appellate court did not address the clarification of this matter of law as we requested, and it has great bearing on the malicious prosecution portion of the case. Since the Plaintiff nonsuited the allegations in her Complaint against me, I should have

been the victor. Conversely, the Chancellor and Appellate Court assigned court costs and fees to me. I agree with the Petitioner that the case was malicious prosecution and the judgment in favor of the Plaintiff and Connecticut General Life was the result of a conspiracy between the judge, the Plaintiff's attorney, and the attorney for Connecticut General to deprive me and my brother of our rights to due process and a jury trial guaranteed by the Constitution of the United States.

3. **INTIMIDATION OF WITNESS TO DEPRIVE OF CONSTITUTIONAL RIGHTS UNDER COLOR OF LAW**

As the only eye witness to the actions of the deceased during an alleged theft, and a jointly accused party to that theft, I was denied the right to testify or present any evidence or defense before being deprived of several thousand dollars of my college funds which were mine by virtue of a divorce decree and repayment of a portion of these funds by my father personally before his death. They were to be held in my brother's bank and dispersed to me after my father's death, per his instruction. I was intimidated by the Chancellor in Court when I tried to testify as to the events I witnessed or to the disposition of my property with threats of imprisonment for contempt (See Petitioner's App. 61, transcript of Nov. 13, 2000). This is witness intimidation under color of law to deprive me of my Constitutional rights. I was the only witness to the actions of the decedent from the time he left the state of Tennessee until his death, so my testimony as a witness is the only valid testimony that can be given about the events set forth by the Plaintiff when charging myself and my brother with theft by coercion. Since my testimony was crucial to the truth, the prevention of this testimony is obstruction of justice, given that the Plaintiff and her Counsel knew the proximity of the decedent to me alone at the time the alleged crime was committed. The fact that the Plaintiff's attorney also moved to

silence my testimony at this trial is conspiracy to deprive me and my brother of our constitutional rights to due process.

4. JURISDICTION OF COMPLETELY DIVERSE DEFENDANTS

The State Court should not have jurisdiction over defendants that have completely diverse state residences, nor in ERISA matters. The Federal District Court was in err when remanding the case to the state court. I believe that the Federal Court would not have remanded the case had it not been for the fraudulent representation of the Agreed Order (Petitioner's App. 34) drafted by attorney Keaton. Our Attorney at the time, Tim McConnell, withdrew that agreement upon the discovery that Attorney Keaton had executed the agreement to remand to state court while withholding the very pertinent fact that the Change of Beneficiary form was unsigned and that he had misquoted the federal judge's Order when writing the document. To confound matters, Judge Stanley of the state court bifurcated the insurance matters from the other matters, which was also in err, because the other items in the complaint were inextricably linked to the insurance claim, i.e., the alleged coerced "signature" on the Change of Beneficiary form was tied to the alleged other forms of coercion by the Plaintiff's Complaint. This bifurcation is unusual, and it made the Federal Judge's task of interpreting the insurance case impossible without the inclusion of all the facts contained in the half of the case that the State retained. Additionally, the Federal pleadings were never incorporated into the State Court files, so it became a catch-22 for the Defendants, making it impossible for us to have a fair t al with a complete set of documents in either state or federal court.

5. DEPRIVATION OF RIGHTS TO DUE PROCESS BY CANCELING JURY TRIAL, UN-NOTIFIED HEARINGS HELD, DISCOVERY WITHELD BY PLAINTIFF

I was deprived of the right to a trial by jury on the facts of the case and to cross-examination of the witnesses and the Plaintiff. This deprivation occurred when the Chancellor cancelled the scheduled jury trial during a hearing which I was not properly notified because the Chancellor had cancelled the hearing date two weeks prior and a new Notice of Hearing did not issue. The other hearings held without my knowledge or without proper Notice were on October 5, 2000 when mine and my brother's attorney presented a Motion to Withdraw as Counsel; on November 20, 2000, when an Order was signed without hearing by the Chancellor; and on November 27, 2000 when several Motions were adjudicated. An Order of Nonsuit was also signed by the Chancellor without prior Motion presented on or around November 21, 2000. I was deprived of the right to Discovery from the Plaintiff when the Chancellor allowed the case to be closed without the Plaintiff having presented any discovery as requested. The Plaintiff submitted a Motion for Protection from Discovery (Petitioner's App. 118), but that Motion was never adjudicated.

6. PLEADINGS STRICKEN FROM RECORD BY APPELLATE JUDGE BEFORE PANEL REVIEW

I was deprived of the right to present all of the adjudicated pleadings to the appellate Court when a single appellate court judge struck pleadings that had been adjudicated by the lower court because the Plaintiff's attorney, Ms. Dugger, claimed that I was acting as my brother's attorney. I had openly denied this charge in the lower court, (Petitioner's App. 67)and the Chancellor at that time did not make any move to strike pleadings because it was obvious that I had made mistakes in typing the Certificate of Service due to

our ignorance and the insufficient time allowed to prepare. There was no indication that I was acting without my brother's full cooperation and involvement, only that I didn't know how to properly type a certificate of service, so I copied the format used by Ms. Dugger. My brother and I jointly prepared the content of documents over the phone and internet and I had to do most of the typing because I had a decent computer program and my brother did not. My apologies extend to this Honorable Court for my ignorance, but the transcript of October 9, 2000 shows that the Chancellor admitted in Court that he doubted that a new lawyer could be prepared by trial time, yet he refused to continue the trial date. If he doubted a professional could be ready for trial in such a short time, then it was an act of sabotage to the pro se defendants when he denied a postponement of the trial date. We could not find a lawyer to take the case because there was no time for adequate preparation before trial. It is an unreasonable burden, and the errors made by laypersons trying to compete on such an impossible scale were used as yet another tool of prejudice to deny due process by eliminating adjudicated pleadings on appeal. Without any grace period allowing us to research the law and the proper formatting of pleadings after the withdrawal of our attorney, the Plaintiff's attorney scheduled several pleadings for hearing and we were required to give some kind of answer or forfeit the case. Attorney Dugger was sending Motions through the mail that had to be answered within 10 days and they would arrive a week later, so I pushed Attorney Dugger to send the documents by fax to me, so that I could get the information to my brother and discuss a plan of action in time for us to respond. Because Attorney Dugger was being uncooperative in providing information to both myself and my brother in timely fashion, and I suspected she did this to deprive us of a right to defend, and because she refused to allow me to question her medical witness in a scheduled deposition, I angrily asserted myself in a fax to her

as our attorney to get her to provide case documents up for hearing. We did not receive the case files from our ex-attorney until November 10, 2000 and were without any resources, so we muddled through the best we could. I find it pertinent to note that the Motion for Sanctions (Petitioner's App. 234) we filed on October 9, 2000 was prepared in a hotel room together on October 8, 2000 and signed by us both, then hand delivered by both of us in Court. This was stricken from the Record on Appeal. Defendant Potts's Request for a Jury Trial and Request to be Heard via Telephone was signed by Defendant Potts. I have not acted as Gordon Potts's attorney. We acted together and support each other as family.

7. CHANGE OF BENEFICIARY FORM WAS IN SUBSTANTIAL COMPLIANCE, BENEFITS WERE DISTRIBUTED TO THE WRONG PARTY, AND THE DECEDENT WAS NOT DEMENTED

The contested Change of Beneficiary form signed by my father changing the beneficiaries from Pearl Lynell Potts to Mary Potts Mayforth, Alice E. Nelson, and Gordon R. Potts Jr. was genuine, though the Plaintiff's pleadings during the trial stated that the signature was coerced. When it was discovered that the form was unsigned, the Plaintiff's pleadings (See Petitioner's App 127) insinuated that the portions of the form that my father hand-wrote may have been forged. The Court assumed substantial Compliance was not met because the form was unsigned, yet we contended that the handwriting on the old and new beneficiary forms was identical. I implore the Court to examine both the old and new versions, (found in the trial record as exhibits to Plaintiff's Motion for Summary Judgment) along with the letter to my father from the insurance carrier (submitted into the Record as attachment to the Deposition of Lisa Weaver, June 12, 2000, pending inclusion in the joint appendix), stating that the change of beneficiary had been processed and making no

mention of the fact that it lacked a signature. Connecticut General Life Insurance initially claimed that this letter did not exist, but I had saved the original from my father's possessions. In the deposition of insurance company employee, Lisa Weaver, she states that my father personally called and asked for the form and that she did not check for a signature before effecting the change after receiving the completed form. This is substantial compliance. As far as the Plaintiff's claims that he was demented, due process was not accorded because the medical records were not examined in any evidentiary hearing as I requested (see Petitioner's App 65, 70, 76). Upon examination of the medical records provided, there is one incident in March of 1999 where Mr. Potts was demented due to an overdose of medication. A subsequent doctor's notation showed that it was a temporary condition and had cleared up in a matter of days. I helped my father get his prescriptions refilled when he was here in Maryland. Many of the medications he was on have side effects and are synergistic with each other. One small mis-dose can cause temporary effects, but this is not a sign of permanent dementia. The proof of "dementia" submitted by the Plaintiff consisted of a single letter from a cardiologist to the Plaintiff, in which the doctor claims to "remember" 6 months later that dementia was present following his conversation with the Plaintiff's attorney. This seems odd, not being anywhere in the doctor's case notes, and given how many patients the doctor sees, especially since he was a specialist who rarely saw my father and a diagnosis of dementia is not based on any findings in his medical notes. I maintain that this letter is not admissible as evidence because the Plaintiff refused to allow cross-examination of this witness when she cancelled the scheduled deposition of this witness and because it is based on a "remembrance" prompted by the Plaintiff that was not in the medical notes at the time of the exam. The Plaintiff did not bring forth any statements by my

father's regular doctor who saw him weekly, and his records indicate nothing more than a temporary condition caused by a drug overdose months before. There is also video footage taken during the time that the Plaintiff claims my father was "demented" and several eyewitnesses to my father's state of mind being sane at this time. One particular material fact was conveniently avoided by canceling the jury trial- the fact that the money that the deceased withdrew from his credit union was done when he was in Tennessee and neither of the Defendants was within hundreds of miles when he did this. This is the same money that both Defendants were said to have stolen by coercion. The method of theft put forth by the Plaintiff is so far-fetched that Houdini himself could not have committed this crime. As far as the "victim" being helpless, he was physically debilitated, but was ordering me to get in his truck and drive him through Texas on the last day of his life. My sister witnessed this. The remaining fiction contained in the Plaintiff's Complaint is hearsay gained from my sister's husband, Dwight, who was at odds with my father and was nowhere near the events when they occurred.

CONCLUSION

I have told the truth. My brother has told the truth. I fully support his Petition. We have been unfairly victimized. The suit filed is malicious prosecution and fictional conjecture produced by the mind of an angry, sick woman. The Plaintiff harassed me on the telephone and swore to get vengeance against my brother and I on the tape recording provided to both the chancery and Appellate Court. I observed delusional behavior by the Plaintiff on the phone and in person. During one trip to Tennessee, I saw the Plaintiff yell at two people in the Wal-Mart line saying they were talking about her, when they were merely talking to each other about the merchandise they were buying. She is what the psychiatric community

terms an "animal hoarder", keeping over 30 cats and dogs in their home at one time. She banned most of our family members from their home several years ago, so I had to stay in a motel when I went to see my Dad in Tennessee and was not allowed near the house. I believe that the Plaintiff suffers from paranoid schizophrenia, as her mother did. My father said that he decided to leave her because in March of 1999, when he had another heart attack and he fell down in the front yard, she refused to call an ambulance. He said she yelled at him to get up because he was embarrassing him in front of the neighbors. Contrary to the Plaintiff's Complaint, my father was happy when he was here and I took good care of him. My brother, Defendant Potts, was victimized by Attorney Dugger because he couldn't find his bank records (the Plaintiff had them) and had to guess at the amounts in his Discovery answers. He guessed the wrong amount because my father had sent some of the deposits directly into the account by mail and my brother did not know what amounts. The Plaintiff diverted my brother's bank statements through change of address cards and then her attorney persecuted him for not producing them in discovery. I have a post office receipt showing her changing addresses at that time because she did this at my address also. This is clearly entrapment and malicious prosecution. The evidence indicates that Attorney Dugger did not investigate the facts before filing this frivolous suit, because she ended up nonsuiting the claims and the facts do not support her accusations. Attorney Dugger was convinced that she could win despite the conflict in material fact because her father is the County Attorney and she is favored by the Chancellor. I am convinced that my Constitutional rights, and that of my brother were violated because we are from other states and not part of their "good old boy" network.

I would ask the Supreme Court to meet out justice at last, to punish those who abuse the law when they are duty bound to uphold it. I believe that my brother and I deserve to

be compensated directly by Connecticut General Life Insurance in the full amount of the $100,000.00 policy, plus interest, because of their negligence in processing the Change of Beneficiary form, failure to disclose that the form was unsigned until they had an Order letting them out Scot-free, and fraudulent misrepresentation of a Federal Court Order with the intent to deprive us of our constitutional rights. I believe that we should be entitled to recover the sum of all the attorney expenses we incurred from Attorney Dugger for her filing of this malicious suit, for all of the hours we have put in pro se at the same rate that a paralegal would be compensated, based on the total hours charged by Ms. Dugger and Mr. Keaton to their clients for the duration of this case. Plaintiff Pearl Lynell Potts should not only have to pick up the tab for any other expenses and mental anguish that she caused us, but also be ordered to give us the remaining ashes of our father so that we can dispose of them as he wished over Toledo Bend lake when the Dogwoods are in bloom so that we can fulfill his burial wishes.

Respectfully Submitted,

Mary Potts Mayforth May 16, 2002

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